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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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8 Roy and Josie Fisher, et al., No. CV-74-00090-TUC-DCB
9 Plaintiffs
10 and
11 United States of America,
12 Plaintiff-Intervenor,
13 v.
14 Tucson Unified School District, et al.,
15 Defendants,
16 and
17 Sidney L. Sutton, et al.,
18 Defendants-Intervenors,

19 Maria Mendoza, et al., No. CV-74-0204-TUC-DCB
20 Plaintiffs,
21 and
22 United States of America,
23 Plaintiff-Intervenor,
24 v.
25 Tucson Unified School District, et al.
26 Defendants.

27
28 **ORDER**

Report and Recommendation Re: Withdrawal of Magnet Status- Approved

1 TUSD adopted the CMP, pursuant to the Unitary Status Plan (USP), on July 15,
2 2014, it filed its final Revised CMP on January 28, 2016. (Doc. 1898).

3 The Court adopts the recommendation of the Special Master and orders
4 withdrawal of magnet status from the following elementary schools, Ochoa, Robison,
5 Safford, and Utterback, and from the following high schools, Cholla and Pueblo. These
6 schools are racially concentrated, having more than 70 percent Latino students in the
7 entering classes of Kindergarten, Sixth or Ninth grades, respectively.

8 These withdrawals are pursuant to directives made by this Court on January 16,
9 2015, which provided for the development of Improvement Plans for these schools and
10 an opportunity for them to attain magnet status, pursuant to criteria measuring the ability
11 of the school to attract students from across the racial divides existing in the school
12 district and to additionally provide enriched programs for neighborhood students. (Order
13 (Doc. 1753) at 3.) The Court does not repeat here the relevant and important case
14 history, which requires a Comprehensive Magnet Plan (CMP) be the cornerstone of
15 Tucson Unified School District's (TUSD) integration efforts required by the Unitary
16 Status Plan (USP). *Id.* at 2-5. For purposes of this Order, it suffices to say that it has
17 long been recognized, including the 2011 Magnet Study and the 2014 CMP, that existing
18 magnet programs and schools in TUSD need improvement or to be changed or
19 eliminated. *Id.* at 5.

20 The Court's January 16, 2015, Order set a one year progress benchmark
21 assessment regarding two measures of success: integration with no more than 70 percent
22 of students being of a single race/ethnicity at the entry grade for the school and student
23 achievement measured reflected by either an A or B school rating. Thereafter, the
24 Special Master was charged with recommending the withdrawal of magnet status for
25 these schools by the fall semester SY 2015-2016. However, on November 19, 2015, the
26 Court agreed to allow the parties, pursuant to a stipulation, to extend their improvement
27 schedules for another year to SY 2016-2017 before the Special Master recommended
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withdrawing magnet status. (Order (Doc. 1870)). The Special Master has now filed his R&R regarding these recommendations. (R&R (Doc. 1974) (revised) (Doc. 1971)).

The schools the Special Master recommends be removed from the CMP failed to meet the definition for a magnet school in January 2015 and November 2015. It is undisputed that these six schools continue to NOT meet the integration goal for being a magnet school. (TUSD Response (Doc. 1979)). There is no assertion that the academic measures for these schools have improved.¹ Both TUSD and the Mendoza Plaintiffs ask for more time. The Court asks: if not now when?

The Court finds that the decreases in racial concentration noted by TUSD is slight, and adopts the finding of the Special Master that “[t]here is no reasonable way to argue that these six schools met the integration criteria set by the Court.” (R&R (Doc. 1974) at 3.) There is absolutely no evidence put before the Court to suggest that more time will improve the ability of these six schools to operate like magnet schools to warrant inclusion in the CMP. This is especially true given the Court’s prior directives in both the January and November Orders issued in 2015 that TUSD must have an operational CMP in place by SY 2016-2017.

The withdrawal of magnet status from these six schools cannot surprise any party or the community. The tentativeness of their inclusion in the CMP has been evident in the Court’s Orders addressing the CMP. In an abundance of caution when this Court required Improvement Plans be developed for these schools, it also required TUSD to develop Transition Plans for schools which did not then meet the integration benchmarks.² TUSD should immediately file the Transition Plans with the Court so that the parties and the community are informed regarding the future planned at these schools, and so that they may be fully funded in the SY 2017-2018 USP budget. The Special Master may file an R&R, which the Court will address on an expedited basis. The parties

¹ There is no discussion whatsoever of the academic achievements of any of these schools.

² The deadline for developing the Transition Plans was 6 months from the Court's November 19, 1995, ruling.

1 may weigh in regarding the sufficiency of the Transition Plans to meet the needs of the
2 students attending these schools, with the Special Master recommending an expedited
3 briefing schedule, if possible to resolve any disagreements over the Transition Plans so as
4 to not impede the SY 2017-2018 budget process. Alternatively, the Special Master may
5 propose a bifurcated schedule to identify the Transition Plans in part to the extent there
6 can be full funding under the SY 2017-2018 USP budget, with full briefing of objections
7 to follow.

8 The Court turns to the Mendoza Plaintiffs' remaining areas of concern. The
9 Mendoza Plaintiffs accuse TUSD of undermining any potential for integration at these
10 schools by failing to hire enough permanent and experienced teachers there, failing to
11 address discipline problems at Safford and Utterback, and failing to reach out and engage
12 families. Additionally, the Mendoza Plaintiffs point out the success of the International
13 Baccalaureate (IB) Programme at Cholla High School and ask this Court to Order TUSD
14 to continue it and other effective programs after magnet status is withdrawn. The Court
15 shares the Mendoza Plaintiffs' concerns and advises that the Transition Plans should
16 address them, with the exception of discipline problems at Safford and Utterback which
17 shall be expressly addressed by the Special Master in his 2015-2016 annual report or
18 separately by R&R. *See* Court's Order approving 2016-2017 USP Budget.

19 Finally, to be clear, the Court reiterates that the withdrawal of magnet status from
20 these schools shall not have a negative impact on their students. The Mendoza Plaintiffs
21 are 100 percent correct: “[T]he failure of the subject schools to achieve the integration
22 criteria set forth in the USP should not relieve them (or the District) of on-going efforts to
23 increase integration at those schools particularly given that every one of them is reported
24 to be racially concentrated in the District’s most recent Annual Report. (2015-2016
25 Annual Report, Appendix II-4.) The District should take steps to encourage open
26 enrollment at these schools by students whose presence would reduce the racial
27 concentration at these schools and should continue to advertise the possibility of
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1 qualifying for free incentive transportation under the USP.” (Mendoza Plaintiffs’
2 Response (Doc. 1978) at 11.)

3 **Accordingly,**

4 **IT IS ORDERED** that the Reports and Recommendations addressing withdrawal
5 of magnet status, (Docs. 1956, 1971, and 1974) are adopted by the Court.

6 **IT IS FURTHER ORDERED** that magnet status is withdrawn for Ochoa
7 Elementary School, Robison Elementary School, Safford K-6 School, Utterback 6-7
8 School, Cholla High School, and Pueblo High School.

9 **IT IS FURTHER ORDERED** that within 21 days of the filing date of this Order,
10 TUSD shall file the Transition Plans for these schools with the Court, and all parties shall
11 move forward in a good faith effort to fully fund the Transition Plans in SY 2017-2018.
12 If necessary, the Special Master may file an R&R, which the Court will address on an
13 expedited basis, pursuant to a recommendation from the Special Master for briefing any
14 objections to the Transition Plans.

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16 Dated this 22nd day of December, 2016.

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20 Honorable David C. Bury
21 United States District Judge